

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Assessment and Collection                    )  
  )     MD Docket No. 03-83  
of Regulatory Fees for                        )  
  )  
Fiscal Year 2003                             )

To: The Commission

REPLY COMMENTS OF KENNETH J. BROWN

I am a Broadcast Engineer, recently retired from the ABC, Inc. subsidiary of The Walt Disney Company ("ABC"). During my tenure, I was the individual with primary responsibility for the preparation of the annual ABC regulatory fee filing from the beginning of the fee collection program in 1994. I supplied the following information to ABC for filing as Comments and, for whatever reason, the company apparently did not file. Believing some of these observations may serve a useful purpose, I hereby file them as my individual reply comments in this proceeding. Clearly, the opinions expressed herein are my own and may not be taken as reflective of any opinions of my former employer.

MAILINGS

The NPRM (FCC 03-64, released 3/26/03) at par. 13 proposes to stop mailing out annually large envelopes full of information on how to calculate the annual fee due. The largest, thickest, heaviest envelopes go to broadcast stations. This mailing is a huge waste, at least for major station group owners, and stopping it would save significant printing and mailing costs. ABC always got the information from Public Notices and the internet long before the envelopes started arriving, and at one envelope for each station ABC (and its subsidiaries) owns, that's an awful lot of paper going straight into the recycling bin. Many stations are owned in groups, where more than one package per group at most is wasteful.

Par. 14 proposes to replace this mailing by a "pilot program" to send a postcard notification of fee due to licensees of most of the media services. This makes a lot more sense, IF AND ONLY IF the postcard states that this is the BASE fee only and does NOT include any supplemental services, such as Broadcast Auxiliary licenses, AND the postcard identifies a phone number that licensees without internet access can call to get a full package mailed to them. My experience has been that finance

persons tend to ignore the broadcast auxiliary and other licenses (such as transmit earth stations) held with many broadcast stations and book only the base fee announced in the public notice, then wonder why the all-inclusive regulatory fee properly prepared is for a higher amount. Listing only the base fee without noting there are often ancilliary licenses carrying their own fees is begging for errors. And even in these days there have to be some stations without internet access, computers are far from universal after all. Allowing for that circumstance just avoids that potential problem. In future years, if the "call to get the whole package" is unused, it can be dropped.

#### ELECTRONIC FILING

Par. 16 proposes to review the whole fee collection process. Items (1) and (2) rather duplicate the two points discussed above. Point (3) speaks to improving the electronic fee payment process. Improvement is sorely needed here as the Commission's house is not in order.

Proposing to make electronic filing mandatory over a certain level is laughable when I at ABC was asked privately last year by a Commission staffer if we couldn't fax them a copy of our future electronic fee submissions (ABC has filed electronically every year since the very beginning of the regulatory fee program in 1994) because that would make it easier for them to deal with the manual steps still involved in registering regulatory fees for Media services. The request was quickly retracted upon the staffer being advised that the Feefiler program printout of ABC's annual electronic payment runs nearly 20 pages. Indeed, nearly every year I got a bill in error for nonpayment of at least one fee which was properly included in the annual electronic filing. The Commission was criticized several years ago by Congress for not knowing if fees have been paid. The Commission has clearly been working on the problem since then and is far better off now than it was, and indeed improving the process does take time. But it is not yet time to discuss mandatory electronic filing until the Commission can properly deal with the electronic submissions it gets now.

#### RELATED POINTS, 3 QUESTIONS NOT ASKED

I wish to raise three points related to improvement of the fee collection process that the Commission did not ask about.

First, the penalty for late payment is set (par. 20) at a flat 25%. This penalty applies starting one day late, but does not escalate as time passes. In short, once a licensee has missed the due date, it might as well not bother paying until and unless the Commission ever gets around to issuing a bill and threatening further sanctions. I am aware of at least one case where bills were apparently never issued for many of a whole group of payments missed by a licensee over a period of years. If the Commission wants to encourage deadbeats to pay, increasing the 25% by a time-related factor, say another 10% to 25% added

for every succeeding year, would penalize the real deadbeats, encourage prompt payment, and collect additional funds to more than offset the interest the deadbeat licensee could presumably collect by investing the unpaid fee funds.

Second, as an adjunct to determining for certain when fees due are paid, the Commission should be issuing bills for all overdue fees, at least for all over a minimal amount. It is not fair to raise the rates on those paying fees to recoup the costs of operating the agency when scofflaws and deadbeats are not even billed for their past due amounts.

Third, uniquely for media services, the Commission charges the current licensee for unpaid fees of prior licensees (par. 18). That makes it possible for the Commission to collect past debts, since attempting to collect from prior licensees no longer holding licenses, or corporations having gone out of business entirely, would be frustrating or impossible. But that also makes it important for diligent licensees acquiring stations to check out the debts of licensees of stations in process of changing hands. I heard of a recent case in which the acquirer apparently was frustrated in that effort, by Commission staff reporting to the due diligence attorney only unpaid fees for which bills had been issued, NOT including unpaid fees for which bills had not yet been issued, for which the acquirer nonetheless became responsible once closing had occurred. This wrongly penalizes the innocent party acquiring a station. If the Commission cannot be bothered to issue bills for past due fees and even fails to report all outstanding fees to an acquiring party doing due diligence, then the Commission should be prohibited from collecting all fees not properly reported. Let Commission staff find out how it is to attempt to go after a deadbeat after the hold on him has expired.

#### CONCLUSION

These suggestions are offered with the sole intent of helping, if possible, to improve the fee collection process.

Respectfully submitted,  
Kenneth J. Brown

May 5, 2003

•